

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 3:18-cv-00199-MMD-CSD

**Order**

Re: ECF No. 232

PATRICIA G. BARNES,

Plaintiff

v.

KILOLO KIJAKAZI,  
Acting Commissioner of Social Security,

Defendant

Before the court is Defendant's Motion for Reconsideration. (ECF No. 232.) Plaintiff filed a response. (ECF No. 230.)

For the reasons set forth below, the motion is granted.

**I. BACKGROUND**

Defendant filed the Answer to Fourth Amended Complaint on May 16, 2022. Plaintiff then filed the Motion to Strike Defendant's Answer to Fourth Amended Complaint on May 24, 2022. The motion to strike was denied except with respect to the Affirmative Defense No. 1, which claimed Plaintiff lacked Article III standing. The court found this defense was barred based on issue preclusion and struck it accordingly. (*See* ECF No. 231.)

**II. LEGAL STANDARD**

"A district court generally should not grant a [motion for reconsideration] in the absence of newly discovered evidence, clear error, or an intervening change in the controlling law." *Wells Fargo Bank, N.A. v. Mahogany Meadows Avenue Trust*, 979 F.3d 1209, 1218 (9th Cir. 2020) (internal quotations omitted); *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014); LR 59-1(a).

1 Motions for reconsideration are disfavored. LR 59-1(b). “A movant must not repeat arguments  
2 already presented unless (and only to the extent) necessary to explain controlling, intervening  
3 law or to argue new facts.” LR 59-1(b). “A movant who repeats arguments will be subject to  
4 appropriate sanctions.” *Id.*

### 5 **III. DISCUSSION**

6 Here, Defendant argues the court committed a clear error in granting Plaintiff’s motion to  
7 strike with respect to the Affirmative Defense No. 1 (claiming a lack of Article III standing). The  
8 court finds the argument set forth in Defendant’s Motion for Reconsideration persuasive.

9 In the motion to dismiss, Defendant argued that Plaintiff did not have Article III standing  
10 to bring an ADEA disparate-impact age discrimination claim because she failed to make the  
11 requisite showing that each of the three elements of standing were met. In her order addressing  
12 the motion to dismiss, Chief District Judge Miranda Du set forth the three elements to establish  
13 Article III standing: “(1) injury in fact, (2) that is fairly traceable to the challenged conduct of the  
14 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” (ECF No. 219  
15 at 13.) Judge Du determined that Plaintiff’s pleading contained *allegations* that when accepted as  
16 true were sufficient to withstand a motion to dismiss with respect to Article III standing. (*Id.* at  
17 13-14.)

18 The court granted Plaintiff’s motion to strike Affirmative Defense No. 1 based on  
19 Plaintiff’s argument that the defense was barred by issue preclusion because the district court  
20 previously found Plaintiff had standing in the order ruling on Defendant’s motion to dismiss.  
21 (*See* ECF No. 231 at 7, citing ECF No. 219 at 13-14.)

22 In the motion for reconsideration, Defendant argues that while the *allegations* of the  
23 operative complaint are sufficient to withstand a motion to dismiss, Defendant is still entitled to

1 conduct discovery and raise the issue of standing, if appropriate, in a motion for summary  
2 judgment.

3 The court recognizes that Article III standing is a jurisdictional question that can be  
4 raised at any time if warranted by *evidence*. *Renee v. Duncan*, 686 F.3d 1002, 1012 (9<sup>th</sup> Cir.  
5 2012). In addition, for the issue of Article III standing to be precluded by the doctrine of issue  
6 preclusion, it must have been “actually litigated.” *Gospel Missions of Am. v. City of Los Angeles*,  
7 328 F.3d 548, 554 (9th Cir. 2003).

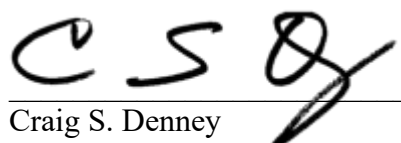
8 Judge Du concluded that Plaintiff’s fourth amended complaint contained sufficient  
9 *allegations* to infer a basis for Article III standing so as to withstand a motion to dismiss. Actual  
10 *evidence* regarding Plaintiff’s Article III standing has not been presented in this case.  
11 Accordingly, the court agrees with Defendant’s argument in the motion for reconsideration that  
12 the affirmative defense of lack of Article III standing is not precluded.

#### 13 IV. CONCLUSION

14 Defendant’s motion for reconsideration (ECF No. 232) is **GRANTED**. The portion of the  
15 court’s order granting Plaintiff’s motion to strike Affirmative Defense 1 asserting lack of  
16 standing (ECF No. 231) is hereby **WITHDRAWN**.

17 **IT IS SO ORDERED.**

18 Dated: June 28, 2022

19   
20 Craig S. Denney  
21 United States Magistrate Judge  
22  
23